

ORDINANCE 96 - 14

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA AMENDING ORDINANCE 92-20, AS AMENDED, KNOWN AS THE UNIFIED LAND DEVELOPMENT CODE OF PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:- REPEALING SECTION 6.9 AND ADOPTING A REVISED SECTION 6.9 (VOLUNTARY DENSITY BONUS PROGRAM) ; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR AUTHORITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR GENERAL PROVISIONS; PROVIDING FOR STANDARDS FOR APPROVAL; PROVIDING FOR REVIEW AND APPROVAL PROCESS; PROVIDING FOR EFFECT; PROVIDING FOR CAPTIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE OF PALM BEACH COUNTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125 (County Government) of the Florida Statutes establishes the right and power of counties to provide for the health, welfare and safety of the existing and future residents by enacting and enforcing zoning and administrative regulations necessary for the protection of the public; and

WHEREAS, the Unified Land Development Code was adopted pursuant to Chapter 163.3202 (Land Development Regulations) of the Florida Statutes to further growth management requirements; and

WHEREAS, the Board of County Commissioners mandated that staff conduct a specific review of Section 6.9, Voluntary Density Bonus, of the Unified Land Development Code, to ensure consistency with the Comprehensive Plan, ensure technical consistency among the various provisions, evaluate its effectiveness, and make proposals for appropriate revisions; and

WHEREAS, the Board of County Commissioners desires to foster home ownership as a strategy for the stabilization and revitalization of residential areas and, accordingly, desires to provide incentives for ownership as a part of the voluntary density bonus program; and,

WHEREAS, the Board of County Commissioners determines that the amendment will achieve consistency with the Comprehensive Plan, improve the procedures and standards for the Voluntary Density Bonus Program, and make the program more effective; and

WHEREAS, the Board of County Commissioners, sitting as the Land Development Regulation Commission, has found this amendment is consistent with the adopted Comprehensive Plan;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:

Part 1. The Unified Land Development Code is amended as follows:

Section 6.9, Voluntary Density Bonus, is hereby repealed in its entirety and replaced with the following:

A. Purpose and Intent. The purpose and intent of the *Voluntary Density Bonus* (VDB) is as follows:

1. The VDB accommodates provisions for the development of housing affordable to very low and low income households in fulfillment of *Policy 2.i.5 of the Housing Element of the Comprehensive Plan*. For the purposes

of this ordinance Affordable Housing is defined as Group A: households with incomes of 50% or less of the median adjusted gross income for households within the County; and Group B: households with incomes greater than 50% but less than or equal to 80% of the median adjusted gross income for households within the County. The development of affordable housing is accomplished by providing for an increase in permitted density (a density bonus) in exchange for the construction of affordable housing on site or off-site; or a payment in-lieu-of construction of Group A units into the Housing Trust Fund; or a combination of construction and an in-lieu payment.

2. The VDB addresses an equitable geographic distribution of affordable housing in accordance with *Policy 2-g of the Housing Element of the Comprehensive Plan*.
3. The VDB addresses the preservation of affordability of units, designated under the program, for Group A and Group B households in accordance with *Policy 2-h of the Housing Element of the Comprehensive Plan*.
4. The VDB provides for the implementation of *Land Use Element Policy 7-a* and that portion of the *Land Use Element, Implementation Section* which deals with income restrictions on residential densities of greater than eight (8) units per acre.

B. **Authority.** Authority to adopt this Section is pursuant to *Article VIII, Sec.1, Fla. Const., the Palm Beach County Charter, Sec. 125.01, et. seq., Fla. Stat. and Sec.163.3161, et. seq. Fla Stat.*

C. **Applicability.** In cases of conflict between this Section and other Sections of the *ULDC*, the provisions of this Section shall prevail.

1. **Location:** This section may be applied to any residential development proposed within the urban service area of *unincorporated Palm Beach County*.
2. **Discretionary Program:** The *Voluntary Density Bonus Program* is a discretionary program in which additional density may be granted if the granting of such additional density will further the County's objective of providing housing opportunities for Group A and Group B households. Nothing stated herein is intended to, and specifically is intended not to, create any property right(s) for the owner of any property.
3. **Concurrent Processing:** The *Voluntary Density Bonus* shall be considered and applied concurrently with an associated development order application. Such a development order shall be either a rezoning to a planned development district, an amendment to a planned development, or a conditional use, all of which require duly noticed public hearings before the *Board of County Commissioners*. Such hearings are necessary due to the accommodation of a land use intensity greater than that shown on the *Future Land Use Map*.

D. **General Provisions.** A development may exceed its permitted density, up to one hundred (100) percent, without prior approval of a *Site Specific Comprehensive Plan Amendment*. In exchange, the development must provide for affordable housing units by complying with the provisions of this *Section 6.9*.

1. **Manner of Providing Units:** The affordable housing shall be provided through construction of units on site, or on another site approved concurrent with the project approval; or through payment of an in-lieu-of

1 construction fee, for Group A units only, into the *Housing Trust Fund*; or a
2 combination of the above.

3 **2. Minimum Number of Units to be Provided:** The minimum number of
4 affordable housing units to be accommodated shall be as follows:

5 (a) For rental projects, 40% of the "bonus" units shall be designated for
6 Group B and Group A households. Of those units, 50% shall be for
7 Group A households except as provided in (b) below.

8 (b) In circumstances where land value and development cost make the
9 full accommodation of on-site Group A units infeasible, the number
10 of such units may be reduced to a minimum of 6% of the bonus
11 units provided the following requirements are met:

12 I. For each unit of Group A housing which is reduced, 1.2
13 units of Group B housing shall be provided.

14 ii. The *VDB* petition shall state that this option is being
15 requested. The application shall contain appropriate data
16 upon which the *LUAB/LPA* and the *BCC* may base their
17 determination that the pre-requisite circumstance, as stated
18 in (b) above, is applicable.

19 (c) For ownership projects, 40% of the bonus units shall be designated
20 for Group B households. There shall be no obligation to provide
21 housing for Group A households.

22 (d) The required unit count shall be established by rounding down to
23 the nearest whole number, with a minimum of one unit.

24 (e) In applying the *VDB*, only the number of units required pursuant to
25 this Sub-Section 6.9.D.2 (*Minimum number of units to be provided*)
26 shall be subject to qualifications, assurances, and restrictions as set
27 forth below.

28 **3. Assurances of affordability.** The developer shall provide guarantees
29 which, for a minimum period of fifteen years for rental units and ten years
30 for ownership units, maintain the affordability for units that are required to
31 be for Group A and or Group B households. During this period of time no
32 unit shall be rented except to a qualified household. The guarantee must be
33 recorded in the public record. The proposed method and provisions
34 regarding such assurance must be reviewed by the *LUAB/LPA* who shall
35 make a recommendation to the *BCC* as to acceptability. The *BCC* shall
36 make a final determination of acceptability at the time of consideration of
37 the attendant development order application.

38 Sufficient information must be provided, as a part of the *VDB petition*, to
39 allow the *LUAB/LPA* and *BCC* to make a reasonable assessment of the
40 proposal. Items which may be considered include, but are not limited to:

41 (a) for projects where there are other participating agencies which have
42 affordability restrictions e.g. State, Federal, a subordinated mortgage
43 is generally acceptable;

44 (b) a subordinated mortgage to private institutions may be allowed
45 when it is determined that there are significant provisions to
46 mitigate the potential of default;

- (c) the placement in escrow of 50% of the corresponding in-lieu payment with an arrangement where the balance decreases over time, e.g. 1/10 (sale) 1/15 (rental) per year;
- (d) a stipulated resale agreement where certain increases in value are remitted to the *Housing Trust Fund*;
- (e) restrictions on rental rate escalation;
- (f) restrictions on conversion to nonresidential use; and,
- (g) other arrangements which are previously reviewed and approved by the *Office of the County Attorney*.

4. **Income qualifications.** For units required to be Group A and/or Group B, a developer shall record in the public record a guarantee that the household, upon entry to the unit, shall meet the definition of a Group A or Group B household. The definition of very-low (Group A) or low income (Group B) households is as provided in *Palm Beach County Ordinance 93-8, as amended*. The manner of guarantee must be reviewed by the *LUAB/LPA* who shall make a recommendation to the *BCC* as to acceptability. The *BCC* shall make a final determination of acceptability at the time of consideration of the attendant development order. The form of the guarantee shall be approved by the *Office of the County Attorney* prior to certification of the final site plan.

5. **Limitations on restrictions.** No affordable housing units, which are required pursuant to this program, or units above the density of eight (8) units per acre shall be subject to restrictions beyond the income qualifications set forth herein.

This provision may be waived by the *BCC* upon consideration of the following:

- (a) the need for the restriction in terms of providing housing for a specific target group e.g. disabled populations, but not including the elderly, and the assurances that the target group will, indeed, have access to the new housing;
- (b) whether the restriction is in line with the objective of providing housing opportunities for Group A and Group B households; and,
- (c) the impact, upon the immediate geographic area.

6. **Dispersal - Internal.** Units for Group A and Group B households shall be distributed throughout a development so that there is not a concentration of the *VDB* units.

- (a) Affordable housing units must be distributed throughout the development.
- (b) Developments that offer varied bedroom and floor area options shall include similar variation in the required affordable housing units.
- (c) When specific percentages of Group A and Group B households are stated in an application, the manner in which the percentages are to be maintained shall be described.
- (d) When the *VDB* is used in conjunction with other programs (e.g. *HTF*, *SHIP*, *Tax Credits*) which require a minimum amount of affordable housing that is in excess of the minimum required for the

VDB, the VDB petition shall address all such units. If such minimums are imposed subsequent to approval of the VDB, it will be necessary to formally apply for a modification to the VDB development order.

(e) In addition to the above, when the percentage of units targeted for affordable housing is at, or exceeds, 50% of the total development, a management plan shall be a part of the application. Items to be addressed in a management plan include, but are not limited to: types and quantity of recreation facilities; tenant and/or ownership education services; accessibility to social service information and/or programs; on-site management; on-site day care facilities; on-site security; and, special crime prevention and crime reduction design considerations; and, assurances that the management plan shall be implemented and maintained.

(f) The manner in which the requirements of this Sub-Section 6.9.D.6 shall be maintained must also be provided in the VDB petition. Such manner must be reviewed by the LUAB/LPA who shall make a recommendation as to acceptability. The BCC shall make a final determination of acceptability at the time of consideration of the attendant development order. The form of the assurance shall be approved by the Office of the County Attorney prior to certification of the final site plan.

7. **Dispersal -External.** Units for Group A and Group B households shall be distributed equitably throughout *Palm Beach County* so that there is no undue concentration associated with the implementation of the VDB. The baseline for an acceptable concentration of Group A and Group B housing shall be forty percent (40%) of the occupied households in the sector. Study sectors which have a concentration of 40% or less shall be considered as, generally, acceptable for receiving additional Group A and Group B households. Study sectors which have a concentration of greater than 40% should generally be considered as having an undue concentration of Group A and Group B households. In either case, the 40% baseline is a guideline to be considered along with other information in making the assessment of equitable dispersal and undue concentrations. The assessment of equitable distribution shall involve the following:

(a) Analysis of housing and demographic data within a "study sector" which shall be delineated relative to the size and character of the proposed development and shall include such features as schools, shopping areas, street system, civic uses, and employment opportunities. For data purposes, the sector shall be adjusted to accommodate census tracts or census block groups.

(b) Household income characteristics for the study sector shall be derived from 1990 census data, as amended by the Census Bureau. The income level of a "family of four" shall be used for the determination of households within the Group A and Group B household categories.

(c) The ranking of the sector, as identified in the *Palm Beach County Affordable Housing Study, June, 1994*, with respect to Tables 2.3 and 2.4, *Distribution of Households by Income Groups*, shall be considered along with other information in making the assessment of equitable dispersal and undue concentrations.

(d) The above information, along with other relevant information from the *Palm Beach County Affordable Housing Study, June, 1994*, and developer supplied information, shall be considered by staff and the LUAB/LPA in making recommendations regarding equitable geographic distribution of affordable housing for compliance with *Housing Element Policy 2-g*.

8. **Allowable Density:** The density of the development shall not exceed a one hundred (100) percent increase above the permitted density. However, in no event shall the density exceed a maximum of sixteen (16) dwelling units per acre. "Permitted density" shall be determined by either: (a) the unit count allowed by density designation on the *Future Land Use Atlas* and as applied through provisions of Section 6.5 of the *ULDC*; or, (b) the allowable density of a previously approved development order, for the same property, pursuant to Sections 1.5 and 6.8 of the *ULDC*.

9. **Provisions of Basic Services:** For developments which have a density greater than eight (8) units per acre or which seek a density bonus equal to, or greater than, seventy percent (70%), there must be a demonstration of proximity to public transportation and employment opportunities so that residents will be able to access employment or other destinations appropriate for the type of housing without exclusive reliance on the automobile.

10. **Payment in-lieu-of construction.** A developer may elect to make a payment into the *Housing Trust Fund* in-lieu-of construction of Group A housing units.

(a) **Basis of the payment.** The payment shall be on a per unit basis of an amount equal to 1.2 times the unit's production cost. For the purpose of this Section 6.9, unit production cost shall be the base construction cost of the unit based upon gross floor area and construction cost per the latest edition of *SBCCI, Building Valuation Data*. The provisions of Section 6.9.D.2.b (*varied floor plans*) shall be considered in the calculation.

(b) **Establishing Amount of Payment:** The proposed amount of the in-lieu-of payment shall be included in the *VDB petition*. Establishment of the amount shall be a part of the development order. It shall be subject to reconsideration when consideration is given to an extension of time under *ULDC Section 5.8*.

(c) **Payment.** Payment shall be due prior to the issuance of the first building permit.

11. **Combination of construction of units and the payment in-lieu-of construction.** The developer may elect to construct a portion of the required Group A units in conjunction with a payment in-lieu-of construction to account for the remaining Group A units.

12. **Use of In-lieu Payments:** All in-lieu fees collected under this *VDB* shall be deposited in the *Housing Trust Fund* established by *Palm Beach County Ordinance No. 93-8, as amended*, and used for purposes contained therein.

13. **Displacement:** Any tenant displaced, as a result of development of the *VDB* project, shall be the subject of a relocation program which will, at a minimum, describe efforts to relocate and/or make aware of comparable housing opportunities including the availability of housing at the subject site.

1 **E. Standards For Approval.** An application submitted under this *Section 6.9* shall be
2 reviewed for compliance with the following standards. Recommendations as to
3 compliance shall be made by staff and the *LUAB/LPA*, as appropriate, with the final
4 determinations being made by the *BCC*. Each of these standards must be met in
5 order for a *VDB* award to be made.

- 6 1. The development must be located within the *Urban Service Area*.
- 7 2. The resulting development shall be deemed compatible with surrounding
8 land uses. The determination of compatibility shall include:
 - 9 (a) a standard assessment of Future Land Use Designations, zoning
10 designations, and actual use of the surrounding lands;
 - 11 (b) the impact of the proposed development upon surrounding land
12 uses, both current and future; and,
 - 13 (c) the impact of the external environment upon the suitability and
14 success of the proposed *VDB* development.
- 15 3. The development shall meet all concurrency requirements at the level of
16 impact calculated at the bonus density.
- 17 4. The resulting affordable housing units will not result in an inappropriate
18 concentration, pursuant to *Section 6.9.D.6*, of such housing within the
19 proposed development.
- 20 5. The resulting affordable housing units will not result in an inappropriate
21 concentration, pursuant to *Section 6.9.D.7*, of such housing within a given
22 geographic area.
- 23 6. Adequate assurances as required in *Sections 6.9.D. 3,4, and 5*.
- 24 7. Adequate provisions for displaced tenants pursuant to *Section 6.9.D.13*.
- 25 8. The resulting development shall be consistent with the goals, objectives,
26 and policies of the *Comprehensive Plan* and the provisions of this *Section*
27 *6.9*.

28 **F. Review and Approval Process**

- 29 1. **Presubmittal Conference.** Prior to submittal of a petition requesting a
30 density bonus, the applicant must attend a presubmittal conference with the
31 *Director of Planning*, or designee, to establish the geographic area (sector)
32 within which the dispersal analysis is to be made. A failure to establish the
33 area in this manner may result in the rejection of the development
34 application.
- 35 2. **Submission of Petition.** A petition for the *VDB* shall be submitted to the
36 *Planning Division* concurrent with submission of a *General Application* for
37 a Class A Conditional Use, a rezoning to a Planned Development District,
38 or an Amendment to a previously approved Planned Development District
39 (ref *Section C*) to the *Zoning Division*. The *General Application* shall be in
40 accordance with the procedures of *Section 5.4* or *6.8.A*, as applicable. The
41 *VDB* application form and required submittal materials shall be established
42 by the *Director of Planning*. A site plan which shows the location of
43 roadways, parking areas, buffer areas, recreation and amenity areas, and
44 building areas along with typical building footprints shall be a part of the
45 petition. The petition must identify any *Flexible Property Development*

Regulations which are being sought pursuant to *ULDC Section 6.5.L* or *Optional Residential Standards* pursuant to *Section 6.8.B.6.a.4*.

3. **Determination of sufficiency.** The *Planning Director* shall determine the sufficiency of the petition within five (5) working days from its receipt. If it is determined that it is not sufficient, written notice shall be sent to the applicant specifying the deficiencies within three (3) working days of the determination. The *Planning Director* and *Zoning Director* shall take no further action unless the deficiencies are remedied. If the deficiencies are not remedied within twenty (20) working days, the petition shall be considered withdrawn. If the petition is determined sufficient, the *Planning Director* will process it pursuant to the procedures and standards of this *Section 6.9*.

4. **Review by CAH staff.** The petition shall be reviewed by the staff of the CAH after a determination of sufficiency but prior to consideration by the LUAB/LPA.

5. **Review by the LUAB/LPA.** The petition shall be reviewed by the LUAB/LPA after a determination of sufficiency but prior to consideration by the Zoning Commission of the associated development order. The *Director of Planning* shall present a report to the LUAB/LPA which describes how the proposed development complies with *General Provisions* as set forth in *Section 6.9.D*. and with respect to compliance with each of the *Standards* set forth in *Section 6.9.E*.

The LUAB/LPA shall make a determination of compliance with each of the *General Provisions*. The LUAB/LPA shall recommend approval, approval with conditions or denial of the requested increase in density based on the *Standards*. The LUAB/LPA may recommend conditions in order to assure compliance with said *General Provisions* and/or the *Standards*.

The LUAB/LPA's recommendation shall be forwarded to the BCC who shall have the final authority with regard to compliance with this *Section 6.9*.

6. **Review by the Zoning Commission.** Consideration of the VDP petition and its standards pursuant to this *Section 6.9* shall be separate from the *Zoning Commission's* action on the development application. However, when applicable, the *Zoning Commission* shall take concurrent action with regard to the increased density, compatibility with the increased density on surrounding land uses, and the *Flexible Property Development Regulations* as allowed by *ULDC Section 6.5.L* or the *Optional Residential Standards* of *Section 6.8.B.6.a.4*.

7. **Action by the BCC:** All VDB petitions shall be approved, approved with conditions or denied by the *Board of County Commissioners*. The BCC shall act on the increased density allowable, through the VDB, by a motion separate from the associated development order. The BCC may rely upon the findings made by the LUAB/LPA in rendering its action. However, the actions of the LUAB/LPA shall be deemed advisory for the purpose of taking final action on a VDB petition. The BCC shall then act on the associated development order and may approve it at the requested density or at a lesser density.

G. **Effect.** Approval of a voluntary density bonus, by the *Board of County Commissioners*, shall grant the right to increase density consistent with the terms approved in the development order. The density bonus shall run with the development order.

1. **Amendments to a voluntary density bonus.** A density bonus may be amended, extended, varied or altered only pursuant to the standards and procedures established for its original approval, or as otherwise set forth in this section.
2. **Map designation of a density bonus development.** A development which receives an approved density bonus shall be designated by a symbol on the *Future Land Use Atlas* and the *Official Zoning Map* until the development is built-out. At that time, the *Future Land Use Atlas* shall be changed, by action of the County, to reflect the total density of the development.
3. **Transfer of a density bonus.** A density bonus runs with the development order and may be transferred to a new owner of the development only if the new owner agrees to fulfill all the terms of the agreement made by the original owner. Density gained through the VDB shall not be eligible for use in the *Transfer of Development Rights Program*.
4. **Subject to Section 5.8, Compliance with Time Limitations:** The increase in density allowed by an approved VDB is subject to provisions of Section 5.8. During such review the VDB shall be re-evaluated pursuant to the Standards of Section 6.9.E and, the Provisions of Section 6.9.D.
5. **Review.** This Section 6.9 shall be reviewed on an annual basis commencing in January 1997 in order to ascertain its effectiveness and determine if changes are warranted. The review shall occur by a written report, prepared by the Planning Division, to the BCC. The report shall address, at a minimum, the number of applications received, the role of the LUAB/LPA in the review process, the number of units approved, the number of units constructed, and the identification of any problems or concerns associated with the implementation and administration of this Section 6.9.

Part 2. CAPTIONS:

The captions, sections headings, and section designations used in this ordinance are intended for the convenience of users only and shall have no effect in the interpretation of the provisions of this ordinance.

Part 3. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances applying to the unincorporated area of Palm Beach County in conflict with any provision of this ordinance are hereby repealed to the extend of any such conflict.

Part 4. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held by the Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this ordinance.

Part 5. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provision of this ordinance shall become and be made a part of the code of laws and ordinances of Palm Beach County, Florida. The Sections of the ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

1 **Part 6 EFFECTIVE DATE:**

2 The provisions of this ordinance shall become effective upon filing with the Department of State.

3 **APPROVED AND ADOPTED** by the Board of County Commissioners of Palm Beach County,
4 on the _____ day of APR 16 1996, 1996.

5 **ATTEST:**

PALM BEACH COUNTY, FLORIDA

BY ITS BOARD OF COUNTY COMMISSIONERS

6 DOROTHY H. WILKEN

7
8 By: *Sharon S. Kelley*
9 Deputy Clerk

10 APPROVED AS TO FORM AND
11 LEGAL SUFFICIENCY

12 By: *Barbara Altman*
13 COUNTY ATTORNEY

14 EFFECTIVE DATE: Filed with the Department of State of the 23rd day of April,
15 1996, at _____M.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on 4/16/96
DATED at West Palm Beach, FL on 5/7/96
DOROTHY H. WILKEN, Clerk
By: *Myllis A. House* D C